

Riley G. v. Ryan G.

Caselaw No.

No. S-19-892

Filed on

Friday, June 5, 2020

Summary: Rashell K. and Ryan G. are the biological parents of Riley G. In November 2018, Rashell sought to modify a 2016 court order and formal parenting plan awarding Rashell legal and physical custody of Riley, subject to Ryan's parenting time. She had remarried and had a newborn child with her new husband, Joshua Chubb. Chubb was active in the National Guard and was scheduled to be deployed to Washington, D.C. for one year, after which he would be stationed in either Missouri or Alabama. Rashell asserted that it would be in Riley's best interests to permit removal from Nebraska and requested permission to move with the minor child to the District of Columbia, and thereafter to where her husband is stationed. Ryan filed an answer opposing the removal and a counter-complaint seeking a change of custody.

The district court first found that Rashell met the threshold requirement of proving a legitimate reason for moving. Rashell's desire to establish a family with her new husband, her new child, and Riley coupled with the salary increase from Chubb's new position constituted a legitimate reason for the move.

The court then considered the best interests factors, including (1) the parents' motives for seeking or opposing the move, (2) the potential the move holds for enhancing the quality of life for the child and custodial parent, and (3) the impact the move will have on contact between the child and the non-custodial parent. After weighing each of these factors, the court held that the move was in Riley's best interest and approved the request to move. The district court issued a final order granting Rashell leave to remove the minor child from the State of Nebraska and to determine his primary place of residence.

Ryan appealed the order, arguing that the district court erred in (1) finding that Rashell demonstrated a legitimate reason for leaving Nebraska with Riley; (2) finding that it was in Riley's best interests to relocate to Washington, D.C.; (3) granting Rashell the "opened-ended right" to relocate outside of Nebraska; and (4) not finding that a material change in circumstances warranted a change in custody.

The issues in this case do not involve the legal framework applied by the district court, but rather involve the court's application of that legal framework. On appeal, questions concerning child custody determinations are reviewed de novo, and the district court's judgment will be upheld in the absence of an abuse of discretion.

In response to Ryan's first argument, the Nebraska Supreme Court upheld Rashell's desire to live with her new spouse near the location of his job as legitimate. Likewise, the Court, finding no abuse of discretion, upheld the district court's finding that moving to D.C. with Rashell was in Riley's best interests. Because the district court applied the correct legal analysis, the Court refused to overrule the weight given to specific factors within that analysis. For the same reasons, the Court found that Ryan's fourth argument lacked merit. Because the district court properly granted Rashell permission to move to Washington D.C, with Riley,

the move could not constitute a material change of circumstances warranting a change in custody.

However, the Court did find merit in Ryan's third argument, that the district court erred in granting Rashell "open-ended" permission to relocate Ryley to Washington D.C., and then to the unknown location of Chubb's new job. Under *Maranville v. Dworak* (2008), "a Court cannot delegate to a custodial parent, who has obtained permission only for removal of a child from Nebraska to one state, the authority to move the child to yet another state without permission." The district court granted Rashell permission to move Ryley to Washington, D.C., but the court's order says nothing about then moving Ryley to Missouri or Alabama. Thus, the district court did not (and could not) grant Rashell the authority to move Ryley to another state without permission. The Court modified the order to make clear that the permission granted to remove Ryley from Nebraska extends only to Washington, D.C. If Rashell later wants to move Ryley to Missouri or Alabama, she will again need permission from the court.

The Nebraska Supreme Court affirmed the district court order as modified to grant Rashell permission to relocate Ryley only to Washington, D.C.
